

UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII

UNITED STATES OF AMERICA,

v.

JAMES TROIANO,

Defendant.

Criminal No. CR05-00261 HG-01

DECLARATION OF WALTER R.  
SCHOETTLE

**DECLARATION OF WALTER R. SCHOETTLE**

WALTER R. SCHOETTLE, pursuant to 28 U.S.C. § 1746, under penalty of perjury, and deposes and says as follows:

1. I am the attorney for Defendant-Appellant, JAMES TROIANO in the above-captioned matter and make this declaration upon my own personal knowledge in support of the foregoing Application for Indigent Status on Appeal and in support of the accompanying request for transcripts on appeal.

2. I substituted into this case in place of prior court appointed counsel TODD EDDINS by notice filed herein on June 5, 2006, approved by Magistrate Judge Kurren.

3. Thereafter I represented Mr. Troiano with respect to sentencing.

4. Mr. TROIANO is unable to pay for my services herein, and I have not received any compensation for my services rendered herein.

5. Mr. TROIANO is unable to pay the filing fee or the cost of transcripts of hearings and trial.

6. I have discussed the case extensively with Mr. TROIANO and briefly with Mr. EDDINS and, based upon such discussions, believe there are good grounds for an appeal raising some or all of the following issues:

a. Whether the superceding indictment alleges an offense under federal law over which this court has jurisdiction?

b. Whether there was sufficient evidence adduced at trial upon which a reasonable juror could conclude that Agader-Silva, Incorporated, doing business as "The Brown Bottle," was engaged in interstate commerce?

c. Whether Defendant-Appellant received competent assistance of counsel?

d. Whether the Court abused its discretion in denying Defendant-Appellant's request for a continuance of trial?

e. Whether the Court erred in allowing a former prosecuting attorney to serve as a member of the jury?

f. Whether the Court erred in denying Defendant-Appellant's motions to dismiss filed 9/28/05 and 2/23/06?

g. Whether the Court erred in terminating Defendant-Appellant's motions to dismiss filed 2/27/06 (docket numbers 83, 84, and 85)?

h. Whether the Court erred in denying Defendant-Appellant's motions in limine filed 8/10/05 (Docket numbers 34 and 35) and 3/15/06?

i. Whether the Court erred in granting the government's motion in limine filed 3/27/06?

j. Whether the Court erred in denying Defendant-Appellant's motion for mistrial?

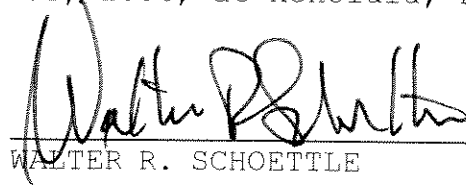
7. With respect thereto, in order to provide Mr. Troiano with effective assistance of counsel on appeal, I will need to obtain transcripts of the following proceedings: Hearings before Judge Chang, dated 7/22/05 and 5/22/06; hearing before Judge Kurren, dated 10/13/05; hearings before Judge Gillmor on 10/24/05, 3/17/06, 3/23/06 and 3/29/06; and trial before Judge Gillmor, dated 4/4/06, 4/5/06, 4/10/06, 4/11/06, 4/12/06, 4/13/06, 4/18/06 and 4/19/06.

8. Attached hereto as Exhibit "A" is the original Financial Affidavit, form CJA 23, signed by Defendant-Appellant, JAMES TROIANO, in my presence, on September 20, 2006.

9. Attached hereto as Exhibit "B" is the original F.R.A.P., Form 4, filled out and signed by Defendant-Appellant, JAMES TROIANO, in my presence, on September 20, 2006.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 19<sup>th</sup> of September, 2006, at Honolulu, Hawaii.

  
WALTER R. SCHOETTLE